

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Oct 15, 2020**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHRISTINA LAGROU, on behalf of  
herself and others similarly situated,

Plaintiff,

v.

MONTEREY FINANCIAL SERVICES,  
LLC, D/B/A/ MONTEREY  
COLLECTIONS,  
Defendant.

No. 2:18-CV-0313-SAB

**ORDER DENYING CLASS  
CERTIFICATION**

Before the Court are Plaintiff's Motion for Class Certification and supporting Memorandum of Law, ECF Nos. 31 and 32, and Defendant's Opposition to Plaintiff's Motion for Class Certification, ECF No. 48. These motions were considered without oral argument. Plaintiff is represented by Matthew Crotty, Ronald Allen Page Jr., and Stephen Taylor. Defendant is represented by Carson Cooper, Richard Scherer Jr., James Donaldson, and Timothy George Moore.

**Factual Background**

On or about October 1, 2014, Plaintiff Christina Lagrou ("Ms. Lagrou") received services from Women's Health Connection ("WHC"), a local healthcare provider. ECF No. 27 at ¶ 9. Health Diagnostic Laboratory, Inc. ("HDL"), a

1 Virginia-based company that specialized in providing laboratory services, then  
2 performed laboratory tests in connection with Ms. Lagrou's medical services. *Id.* at  
3 ¶ 10.

4 On June 7, 2015, HDL filed for Chapter 11 bankruptcy in the Bankruptcy  
5 Court for the Eastern District of Virginia. *Id.* at ¶ 11. The Virginia District Court  
6 entered an order confirming the Debtors' second amended plan of liquidation,  
7 confirming Richard Arrowsmith as the liquidating trustee and successor to HDL.  
8 *Id.* at ¶ 12.

9 Arrowsmith then hired Defendant Monterey Financial Services  
10 ("Monterey"), a debt collection agency, to collect debts stemming from HDL's lab  
11 tests. *Id.* at ¶ 13. Monterey sent out a collection letter to Ms. Lagrou on April 29,  
12 2016, seeking to collect \$2,709.36. *Id.* at ¶ 15. Ms. Lagrou disputed the debt and  
13 sent a letter to Monterey on May 6, 2016, "unequivocally informing them" that she  
14 disputed the debt and requested validation. *Id.* at ¶ 20.

15 In response to Ms. Lagrou's dispute letter, Monterey sent a follow-up letter  
16 on May 13, 2016 ("the May 13th letter"). *Id.* at ¶ 21. This letter stated that Ms.  
17 Lagrou's account was a "defaulted account with HDL, Inc.," that "this defaulted  
18 account will report accordingly, as a disputed collection on your credit report," and  
19 instructed Ms. Lagrou to "call our office today to set up the necessary  
20 arrangements to satisfy your obligation to the contract." *Id.* at ¶ 22. Ms. Lagrou  
21 alleges the May 13th letter was derived from a template called an "EN453  
22 template" and that Monterey sent substantially similar letters to 22 other  
23 individuals. ECF No. 32 at 4.

24 Ms. Lagrou alleges that the May 13th letter was false and violated two  
25 provisions of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §  
26 1692. First, Ms. Lagrou alleges that Monterey's statement that they would report  
27 the HDL account as a disputed collection on Ms. Lagrou's credit report ("the  
28 reporting statement") constituted a false, deceptive, or misleading statement, in

1 violation of 15 U.S.C. § 1692e(5). *Id.* at ¶¶ 47-53. Second, Ms. Lagrou alleges that  
2 the May 13th letter in its entirety constituted an attempt to collect a disputed debt  
3 without providing verification, in violation of 15 U.S.C. § 1692g(b). *Id.* at ¶¶  
4 54-58.

### 5 **Procedural Background**

6 Ms. Lagrou filed her first class action complaint against Monterey on March  
7 10, 2017, as an adversary proceeding in the United States Bankruptcy Court for the  
8 Eastern District of Virginia. *Lagrou v. Monterey Financial Services, LLC*, Doc. 1,  
9 17-03092(KRH) (Bankr. E.D. Va. 2017). On October 9, 2018, the District Court  
10 for the Eastern District of Virginia granted Ms. Lagrou’s Motion to Withdraw the  
11 Reference of the matter to the Bankruptcy Court and to transfer the matter to the  
12 Eastern District of Washington. *Id.* at Docs. 7-8.

13 Monterey filed a Motion to Dismiss for Failure to State a Claim on  
14 November 16, 2018. ECF No. 14. This Court denied Defendant’s Motion to  
15 Dismiss, finding that Ms. Lagrou adequately pled a plausible claim for relief under  
16 both 15 U.S.C. § 1692e(5) and 15 U.S.C. § 1692g(b). *Id.* at 3-6. As to Ms.  
17 Lagrou’s claim that Monterey’s reporting statement constituted a false, deceptive,  
18 or misleading statement in violation of § 1692e(5), the Court found that  
19 Monterey’s reporting statement gave rise to a reasonable interpretation that they  
20 had a “definite intent to report the debt to credit agencies,” even though Monterey  
21 “never actually intended to do so.” *Id.* at 3. As to Ms. Lagrou’s claim that the May  
22 13th letter was an attempt to collect a disputed debt without providing verification  
23 in violation of § 1692g(b), the Court found that the language in Monterey’s letter  
24 stating “Call our office today to set up the necessary arrangements to satisfy your  
25 obligation to the contract,” in conjunction with the reporting statement, was an  
26 attempt to collect the debt before providing verification. *Id.* at 5-6.

27 Ms. Lagrou filed an Amended Complaint on September 12, 2019. ECF No.  
28 27. She then filed a Motion for Class Certification and supporting Memorandum of

1 Law on February 21, 2020. ECF Nos. 31, 32. In her motion, Ms. Lagrou defines  
 2 the proposed class as: “All consumers within the United States Defendant sent a  
 3 letter substantially similar to the May 13, 2016, letter sent to Plaintiff, in response  
 4 to a consumer dispute.” ECF No. 32 at 2. Monterey filed an Opposition to Ms.  
 5 Lagrou’s Motion for Class Certification on August 12, 2020. ECF No. 48. Ms.  
 6 Lagrou filed a Reply Memorandum of Law in support of the motion on September  
 7 9, 2020. ECF No. 51.

### 8 **Legal Standard**

9 Rule 23 of the Federal Rules of Civil Procedure governs the certification of a  
 10 class. Rule 23(a) requires the party seeking certification to demonstrate:

- 11 (1) The class is so numerous that joinder of all members is impracticable;
- 12 (2) There are questions of law or fact common to the class;
- 13 (3) The claims or defenses of the representative parties are typical of the
- 14 claims or defenses of the class; and
- 15 (4) The representative parties will fairly and adequately protect the
- 16 interests of the class.

17 Fed. R. Civ. P. 23(a). Rule 23 is not a mere pleading standard, and the  
 18 requirements of the rule must be found after a “rigorous analysis.” *Wal-Mart*  
 19 *Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011).

20 In addition to meeting the requirements of Rule 23(a), a proposed class must  
 21 also satisfy at least one of the subsections of Rule 23(b). *Id.* Ms. Lagrou seeks to  
 22 certify a class under Rule 23(b)(3), which requires the Court to find that common  
 23 questions of fact or law predominate over any questions that affect only individual  
 24 members and that class action is superior to other methods for fairly and efficiently  
 25 adjudicating the controversy. Fed. R. Civ. P. 23(b)(3).

26 Neither the Ninth Circuit nor the Supreme Court has articulated a standard  
 27 of proof in determining whether the elements of a class action have been satisfied.  
 28

1 *See Garcia v. Shasta Beverages Inc*, No. CV 19-7798 PA (AFMX), 2020 WL  
2 3628754, at \*2 (C.D. Cal. Mar. 30, 2020); *Southwell v. Mortg. Inv'rs Corp. of*  
3 *Ohio*, No. C13-1289 MJP, 2014 WL 3956699, at \*1 (W.D. Wash. Aug. 12, 2014).  
4 However, many courts have chosen to apply the preponderance of the evidence  
5 standard. *Id.*

### 6 **Analysis**

7 Ms. Lagrou argues that she has satisfied all the elements of class  
8 certification and that certifying a class in this case would facilitate judicial  
9 economy, provide a feasible means to hear individual claims that would  
10 realistically not be brought without a class action, and deter inconsistent rulings.  
11 ECF No. 32 at 4. Monterey argues that Plaintiff fails to satisfy both numerosity and  
12 adequacy because (1) she has not shown that the class is so numerous that joinder  
13 is impracticable and (2) because Ms. Lagrou, as a class representative, has little  
14 knowledge of the basic aspects of her case and has no interest in controlling the  
15 litigation. ECF No. 48 at 2-3. Ms. Lagrou raises two arguments in response. First,  
16 she argues that she can show that joinder of the 16 class members is impracticable  
17 because the class members are geographically diverse and they, as individuals, lack  
18 the ability and financial resources to pursue separate suits. ECF No. 51 at 3-5.  
19 Second, she argues that she is an adequate class representative because she knows  
20 the basic elements of her claim and has not completely ceded control over the case  
21 to her counsel. *Id.* at 7-8.

22 As discussed below, because Ms. Lagrou can neither show that she meets  
23 the presumptive threshold for numerosity nor that joinder in this case is  
24 impracticable, the Court denies Plaintiff's Motion for Class Certification.

25 //

26 //

27 //

28 //

1 1. Whether Ms. Lagrou can satisfy the numerosity requirement under Rule  
2 23(a)(1)

3 Monterey argues that Ms. Lagrou cannot satisfy the numerosity requirement  
4 because the proposed class only has 16 members and she cannot show that joinder  
5 of these 16 members would be impracticable because they are easily identifiable  
6 and all live on the West Coast. ECF No. 48 at 5-8. Ms. Lagrou, in response, argues  
7 that 16 class members does not automatically fail numerosity and that joinder is  
8 impracticable because it would create “needless procedural complexity,” the  
9 proposed class members are all over Washington and California, and—given the  
10 low-recovery nature of FDCPA suits—it is unrealistic that individual class  
11 members will pursue their own lawsuits, especially given the risk of being drawn  
12 into the HDL bankruptcy proceedings. ECF No. 51 at 2-6.

13 *a. Whether a proposed class of 16 presumptively fails the numerosity*  
14 *requirement*

15 Both the Supreme Court and the Ninth Circuit have said that the  
16 “numerosity requirement requires examination of the specific facts of each case  
17 and imposes no absolute limitations.” *Gen. Tel. Co. of the Nw, Inc. v. Equal*  
18 *Employment Opportunity Comm’n*, 446 U.S. 318, 330 (1980); *see also Jordan v.*  
19 *Los Angeles Cty.*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds,*  
20 *Cty. of Los Angeles v. Jordan*, 459 U.S. 810 (1982) (“[T]he absolute number of  
21 class members is not the sole determining factor.”). But they have also both stated  
22 that a class of 15 members would be too small to meet the numerosity requirement.  
23 *Gen. Tel. Co. of the Nw., Inc.*, 446 U.S. at 330 (“Title VII, however, applies to  
24 employers with as few as 15 employees. When judged by the size of the putative  
25 class in various cases in which certification has been denied, this minimum would  
26 be too small to meet the numerosity requirement.”); *Harik v. Cal. Teachers Ass’n*,  
27 326 F.3d 1042, 1051 (9th Cir. 2003) (“The Supreme Court has held fifteen is too  
28 small. The certification of those classes must be vacated on numerosity grounds.”);

1 *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010) (“The [Supreme] Court  
2 based this assessment on a review of lower court cases in which certification was  
3 denied to classes in the 16 to 37 range. In light of this trend, the Court concluded  
4 that a trial court would almost certainly require joinder of all class members rather  
5 than certify a class of 15 (citations omitted).”).

6 Here, Monterey alleges—and Ms. Lagrou even appears to accept—that the  
7 class size is only 16 members. ECF No. 48 at 2; ECF No. 51 at 2. This is merely  
8 one above what the Supreme Court held to be “too small to meet the numerosity  
9 requirement.” *Gen. Tel. Co. of the Nw.*, 446 U.S. at 330. Thus, based on class size  
10 alone, Ms. Lagrou cannot satisfy the numerosity requirement under 23(a)(1).

11 b. *Whether Ms. Lagrou has shown that joinder of the proposed 16 class*  
12 *members is impracticable*

13 Even if a proposed class size of 16 did not fail the numerosity requirement  
14 or if Ms. Lagrou could show that the proposed class size was instead between 16  
15 and 22 members, Ms. Lagrou still could not show that joinder of the proposed class  
16 members is impracticable.

17 “Where the class is not so numerous . . . the number of class members does  
18 not weigh as heavily in determining whether joinder would be infeasible . . . other  
19 factors such as the geographical diversity of class members, the ability of  
20 individual claimants to institute separate suits, and whether injunctive or  
21 declaratory relief is sought, should be considered in determining impracticability of  
22 joinder.” *Jordan*, 669 F.2d at 1319. Courts also consider whether the proposed  
23 class members are known and identifiable. *Id.* at 1320 (“[T]he class is composed of  
24 unnamed and unknown future black applicants . . . . The joinder of unknown  
25 individuals is inherently impracticable.”). “Impracticability does not mean  
26 ‘impossibility,’ but only the difficulty or inconvenience of joining all members of  
27 the class (citation omitted).” *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d  
28 909, 913–14 (9th Cir. 1964)



1 The Court applies the *Jordan* factors to this case. First, the factors of  
2 whether the proposed class members are known and identifiable and whether they  
3 are geographically diverse weigh against class certification. Monterey alleges that  
4 Ms. Lagrou’s proposed class definition only encompasses 16 individuals. ECF No.  
5 48 at 2. Monterey also argues that it can identify each of the proposed class  
6 members because they sent the debt collection letters to 14 individuals with  
7 addresses in Washington and two individuals with addresses in California. *Id.*  
8 Second, the factor of whether the plaintiffs are seeking injunctive or declaratory  
9 relief also weighs against class certification. Ms. Lagrou and the other proposed  
10 class members are bringing claims for actual and statutory damages under the  
11 FDCPA. ECF No. 27. However, it is likely that the factor of whether individuals  
12 would be able to institute separate suits weighs in favor of class certification.  
13 Neither Ms. Lagrou nor Monterey allege the amount of actual damages incurred by  
14 the proposed class members—Ms. Lagrou only alleges that Monterey tried to  
15 collect \$2,709.36 from her, but not how much Monterey’s FDCPA violations  
16 damaged her. *Id.* at ¶ 15. But for statutory damages, 15 U.S.C. § 1692k states that  
17 an individual can only recover statutory damages up to \$1,000, whereas in a class  
18 action, plaintiffs can recover up to the lesser of \$500,000 or 1% of the net worth of  
19 the debt collector.

20 Here, the majority of the *Jordan* factors suggest that joinder is not  
21 impracticable. Because Monterey sent the debt collection letters to individuals at  
22 specified addresses, the proposed class members are known and identifiable.  
23 *Contra Jordan*, 669 F.2d at 1320. According to Monterey, the proposed class  
24 members are all reside on the West Coast and are, in fact, overwhelmingly here in  
25 Washington. ECF No. 48 at 2. Though Ms. Lagrou argues that Washington and  
26 California are still “very large states and travel from any point not relatively close  
27 to this Courthouse would require considerable time,” ECF No. 51 at 4, this does  
28 not rise to the level of impracticability, especially given the small number of



1 proposed class members. *See Martignetti v. Bachman*, No. CV 10-00548-DMG  
 2 (ANx), 2011 WL 13257439, at \*3-4 (C.D. Cal. Nov. 28, 2011) (“Geographical  
 3 diversity is not an overwhelming barrier to joinder as the majority of potential class  
 4 members reside in California [26 class members]. In addition, all but one of the  
 5 potential out-of-state class members [41 class members] live in nearby Nevada.”);  
 6 *contra In re Lidoderm Antitrust Litig.*, No. 14-MD-02521-WHO, 2017 WL  
 7 679367, at \*13 (N.D. Cal. Feb. 21, 2017) (“The DPPs contend that there are 55  
 8 Class Members who are widely geographically dispersed across the United  
 9 States.”); *Charlebois v. Angels Baseball, LP*, No. SACV 10-0853-DOC (ANx),  
 10 2011 WL 2610122, at \*9 (C.D. Cal. June 30, 2011) (“[T]he likelihood of broad  
 11 diversity of geographical locations of class members, who may have attended  
 12 games while visiting the Los Angeles area—weigh in favor of finding an  
 13 impracticability of joinder that is sufficient to establish numerosity.”); *Buttino v.*  
 14 *F.B.I.*, No. C-90—1639SBA, 1992 WL 12013803, at \*2 (N.D. Cal. Sept. 25, 1992)  
 15 (“[B]ecause FBI employees work throughout the United States, the proposed class  
 16 members are geographically dispersed throughout the country.”).

17 It is true that the proposed class members are all individuals who, given the  
 18 low-recovery nature of FDCPA suits, would be unlikely to bring damages suits on  
 19 their own. But Ms. Lagrou’s primary arguments for why the Court should certify a  
 20 class are (1) the Court has “already decided the key question of liability,” (2) there  
 21 is a high disincentive for any plaintiff to bring an individual suit in this case for  
 22 fear of being sucked into the HDL bankruptcy, and (3) forcing proposed class  
 23 members to bring individual suits would inject “needless procedural complexity.”  
 24 ECF No. 51 at 3-6. The Court addresses each of these arguments in turn. First, Ms.  
 25 Lagrou mischaracterizes the Court’s previous ruling. To support her claim that the  
 26 Court already decided the central question of liability, Ms. Lagrou cites to the  
 27 Court’s order denying Monterey’s Motion to Dismiss for Failure to State a Claim,  
 28 ECF No. 14. But the Court in that order merely said that Ms. Lagrou had

1 adequately claim a plausible claim for relief—it was not a definitive ruling on the  
2 merits. *Id.* at 3-6. Second, as Monterey points out, Ms. Lagrou’s argument about  
3 proposed class members’ aversion to being drawn into the bankruptcy proceeding  
4 does not answer why joinder in *this* action is impracticable. ECF No. 48 at 9.  
5 Third, though it may be true that a class action is functionally the only way these  
6 individuals can receive relief, the Court cannot simply certify a class for policy  
7 reasons—Ms. Lagrou must be able to affirmatively demonstrate that the class  
8 actions requirements are met. But because she cannot satisfy the presumptive  
9 threshold for numerosity and she cannot show that joinder is impracticable, the  
10 Court denies Ms. Lagrou’s Motion for Class Certification.

11 2. Whether Ms. Lagrou can satisfy the adequacy requirement under Rule  
12 23(a)(4) or the Rule 23(b) requirements

13 Because the Court finds that Ms. Lagrou cannot satisfy the numerosity  
14 requirement under Rule 23(a)(1), the Court does not find it necessary to address  
15 whether Ms. Lagrou is an adequate class representative. Additionally, because Ms.  
16 Lagrou fails to satisfy the threshold requirements of Rule 23(a), the Court need not  
17 consider whether her claims satisfy Rule 23(b).

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Class Certification, ECF No. 31, is **DENIED**.

3 2. Defendant's Opposition to Plaintiff's Motion for Class Certification,  
4 ECF No. 48, is **GRANTED**.

5 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
6 file this Order and provide copies to counsel.

7 **DATED** this 15th day of October 2020.



12 

13 Stanley A. Bastian  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28